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June 26, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments of Outdoor Life Network, Speedvision Network, The Golf Channel, and BET on Jazz

Dear Mr. Caton:

Outdoor Life Network, Speedvision Network, The Golf Channel, and BET on Jazz ("Commenters") filed Reply Comments with the Commission on May 31, 1996 in response to Comments filed concerning the Commission's *Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, CS Docket No. 96-60, FCC 96-122 (released Mar. 29, 1996)(commercial leased access rulemaking proceeding). The Affidavits of Roger Williams, Jefferi K. Lee and Christopher R. Murvin were attached to the Comments but were not signed. Signed copies of the Affidavits are enclosed. Commenters request the Commission to substitute the signed Affidavits for the unsigned Affidavits.

Thank you for your attention to this matter.

Sincerely,

Maria Browne

Maria T. Browne

Enclosures

No. of Copies rec'd 0+9
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Commercial Leased Access	MM Docket No. 92-266 CS Docket No. 96-60

SECOND AFFIDAVIT OF ROGER WILLIAMS

1. I, Roger Williams, am Executive Vice President and Chief Operating Officer of Outdoor Life Network ("Outdoor Life"), and Speedvision Network ("Speedvision"). I have given a previous affidavit in this proceeding, which was submitted in support of, and as an attachment to, the Comments filed by Outdoor Life Network, Speedvision Network, The Golf Channel, and BET On Jazz (collectively, "Programmers").

2. The purpose of this affidavit is to provide additional information in support of the Reply Comments that Programmers are presently submitting in response to comments filed by other parties concerning the *Further Notice of Proposed Rulemaking* ("NPRM"). In particular, this affidavit is intended to explain the basis for, and rationale of, the transition period recommended by Programmers in their Comments and Reply Comments.

3. In developing its original business plan, Outdoor Life Network and Speedvision Network (collectively, "the Networks") relied heavily upon reasonable assumptions regarding both then-extant channel availability on cable systems nationwide and on estimated increases in cable systems' channel capacity that were expected to develop over

the following ten years. The Networks' estimates of growth in channel capacity were not unlike the Commission's own forecast, in its "going forward" *Order*,[1] that cable systems would increase channel capacity at a rate of nearly three channels per year. Based on those assumptions, Outdoor Life and Speedvision estimated that it would take at least five years from their launch dates in June 1995 and January 1996, respectively, in which to attain subscriber penetration of 20 to 25 million each, the level necessary to cover costs, begin making a profit and become commercially viable.

4. Outdoor Life and Speedvision presently have 3.1 and one million subscribers, respectively. Growth to date has been hindered by a number of factors, including among others the lack of available channel capacity on cable systems, the failure of channel capacity to expand as rapidly as predicted through digital compression and other technological advances, and even the "chill" that has been cast by the pendency of the Commission's current leased access proposals on cable operators' willingness to launch, or negotiate future carriage agreements with, new networks such as Outdoor Life and Speedvision.

5. A formula that reduces rates for leased access users substantially below market value, such as the cost/market formula proposed by the Commission, will artificially boost usage of leased access set-aside channels, many of which are currently used to carry new networks such as the Networks. In doing so, the formula necessarily will result in a dramatic reduction in channel capacity available to start-up programmers. This reduction, both in existing channel availability and in the extent to which the Networks can expect to be carried

[1]*Sixth Order on Reconsideration*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, 10 FCC Rcd. 1226 (1994) at Appendix C, 1316-1319.

on newly added channels as systems' channel capacities expand, will significantly impede the Networks' ability to increase distribution, particularly in the crucial early years of the Networks' development. Consequently, the time that it will take the Networks to increase distribution to 20 to 25 million subscribers, the Networks' break-even point, will be substantially lengthened. Indeed, if the Commission were to adopt its proposed formula and apply only a three year transition, as it suggested by way of example in its NPRM[2], it is almost a certainty that our Networks could not survive long enough to obtain sufficient distribution to reach break-even, given the Networks' substantial start-up and programming costs and early year losses. It is these dire consequences that have led the Networks to oppose so strenuously the Commission's proposed revisions to the existing maximum implicit fee leased access formula and, in the event that the formula must be revised, to support the formulation proposed by the National Cable Television Association.

6. These same factors have also prompted the Networks to propose that, should the Commission adopt any formula that results in a leased access rate that is lower than the current maximum implicit fee, the Commission accompany such change with a sufficient transition period to allow the industry, and in particular new program networks such as Outdoor Life and Speedvision, to adjust to the change in a way that will minimize the harm that the resulting reduction in distribution would otherwise be certain to cause. In particular, the Networks have proposed a detailed transition plan tailored to the Commission's proposal

[2] *Further Notice of Proposed Rulemaking*, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation -- Leased Commercial Access, MM Docket No. 92-266, CS Docket No. 96-60, FCC 96-122 (released March 29, 1996) at ¶ 99.

to adopt its cost/market formula. While this transition plan will still result in much slower subscriber growth than the Networks assumed in their original business plan -- with penetration of 20 to 25 million not being attained until at least their sixth year of operation, if not later -- it would at least give the Networks a chance of reaching break-even and ultimate commercial viability. Absent a transition provision of the type proposed here, the Commission's adoption of its proposed leased access formula would be certain to cause the failure of our networks. In the following paragraphs, I will explain the reasons for the principal features of our suggested transition plan.

7. First, should the FCC adopt its proposed cost/market formula, it will take at least six years for the Networks to increase distribution on cable systems and other multi-channel video program distributors, and to develop a level of subscriber recognition and loyalty -- assuming that our proposed transition plan is also adopted -- sufficient to withstand the impact on distribution that full application of the Commission's reduced-rate formula to all set-aside channels inevitably will cause. Moreover, it will be at least six years until cable systems' channel capacity will have grown enough both to accommodate the full complement of leased access set-aside channels *and* to enable cable operators to carry start-up networks such as the Networks in sufficient numbers to support their continued operations. For these reasons, we are proposing that the overall transition period be no less than six years.

8. Second, a reduced-rate formula should not apply to any cable system with 72 or fewer activated channels until the expiration of the six year transition period, or until system upgrades cause channel capacity to exceed 72 channels, whichever occurs first. Cable systems with 72 or fewer activated channels generally are channel-locked, having virtually no

available channel capacity on which to add new programming networks such as Outdoor Life and Speedvision; indeed such systems generally are still at the phase of adding more established programming networks such as A&E or Discovery. If the Commission's proposed formula were to be applied to such systems, any remaining chance of the Networks being carried by any of these systems would be lost, and the Networks would likely be bumped by those few systems in this size group that do carry the Networks. Cable systems with 72 or fewer channels cannot be subjected to the new rate formula if the Networks, and other start-up networks, are to succeed in increasing distribution to the level necessary to become commercially viable.

9. Third, the initial years of the six year transition period are the most critical to the success of Outdoor Life, Speedvision and other start-up networks. The Networks are currently scheduled to launch on a number of systems, and are in the midst of negotiations with others. To date, the mere pendency of the Commission's leased access proposals has chilled cable systems' willingness to enter into, or even discuss, carriage agreements with the Networks. In order that the Commission's adoption of a reduced leased access rate formula not sabotage the Networks' completion of both their scheduled launches and their current negotiations, the Networks need at least one year in which the new rate formula would not be applied to cable systems, so that such burgeoning relationships not be undermined.[3]

10. Fourth, it is also critical to the Networks' success that the rate formula be

[3]We do not seek this one-year hiatus with cable systems that have 130 or more channels, since such systems generally already possess sufficient capacity to accommodate increased leased access obligations without foregoing their ability to carry start-up networks like Outdoor Life and Speedvision.

phased in gradually over years two through six, such that application of a reduced leased access rate formula would apply less in early years, and then to an increasing percentage of cable systems' set-aside requirements in each successive year. In particular:

a. A reduced-rate formula should be phased in for systems with between 73 and 89 activated channels, beginning with application of the revised rate to 10 percent of channel set-asides by the end of year two, increasing to 25 percent by the end of year three, 45 percent by the end of year four, 70 percent by the end of year five, and 100 percent by the end of year six. Start-up programming networks have their greatest chance of being carried, if at all, by cable systems with more than 72 activated channels. Application of the Commission's proposed formula to cable systems of this size without a graduated transition would result in the Networks, and other start-up programming networks, being bumped from, or not being added by, such systems during the next several years, the most crucial for the Networks and other new programmers.

b. The Commission's proposed formula should also be phased in for systems with between 90 and 129 channels, albeit at a slightly accelerated rate, beginning with application of the revised formula to 15 percent of channel set-asides by the end of year two, increasing to 35 percent by the end of year three, to 60 percent by the end of year four, to 90 percent by the end of year five, and to 100 percent by the end of year six. Systems of this size are also crucial to the Networks' ability to obtain distribution. However, because of their greater channel capacity, it would be possible for such systems to introduce the Commission's proposed cost/market formula at a slightly accelerated rate without inordinately interfering with the launch of new networks such as Outdoor Life and Speedvision. This factor has been reflected in the increased rate of transition.

11. Finally, the Networks believe that it is not necessary to have any delay in implementation of the Commission's proposed formula to cable systems with 130 or more channels. Such systems would appear to have adequate capacity to immediately introduce a revised leased access formula without significantly impacting their carriage of start-up networks.

12. The Networks' proposal of the transition provision described herein should not be deemed to indicate approval, in any manner, of the Commission's proposed leased access formula. The Networks oppose that formula, and alternatively believe that, if the current maximum implicit fee formula is to be revised, the formula proposed by NCTA should be adopted instead. It is only in the event that the FCC rejects our position, and goes forward with its proposed cost/market formula, that we propose the adoption of the foregoing transition plan.

13. Finally, in the event that the Commission does not adopt its cost/market formula, but adopts some other formula (including the NCTA formula) that nonetheless has the effect of reducing fees for leased access from current maximum implicit fee rates, the Networks submit that the Commission must include an appropriate transition provision consistent with the transition plan described above. Any such transition plan should take into consideration the extent to which the current maximum implicit fee formula is reduced, and should tie implementation of the new formula to growth in cable systems' channel capacity. As above, such transition plan should include a first year hiatus during which the revised leased access rate formula would not be applied to leased access channels on any system having fewer than 130 channels, and should introduce the application of the new formula in years two through six on a graduated basis.

I, Roger Williams, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Roger Williams

May 31, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Commercial Leased Access	MM Docket No. 92-266 CS Docket No. 96-60

SECOND AFFIDAVIT OF JEFFERI K. LEE

1. I, Jefferi K. Lee, am President of BET Networks and BET on Jazz: The Cable Jazz Channel ("BET on Jazz"). I have given a previous affidavit in this proceeding, which was submitted in support of, and as an attachment to, the Comments filed by Outdoor Life Network, Speedvision Network, The Golf Channel, and BET On Jazz (collectively, "Programmers").

2. The purpose of this affidavit is to provide additional information in support of the Reply Comments that Programmers are presently submitting in response to comments filed by other parties concerning the *Further Notice of Proposed Rulemaking* ("NPRM"). In particular, this affidavit is intended to explain the basis for, and rationale of, the transition period recommended by Programmers in their Comments and Reply Comments.

3. In developing its original business plan, BET on Jazz relied heavily upon reasonable assumptions regarding both then-extant channel availability on cable systems nationwide and on estimated increases in cable systems' channel capacity there were expected to develop over the following ten years. BET on Jazz's estimates of growth in channel

capacity were not unlike the Commission's own forecast, in its "going forward" *Order*,[1] that cable systems would increase channel capacity at a rate of nearly three channels per year. Based on those assumptions, BET on Jazz estimated that it would take at least five years from its launch date in January 1996 in which to attain subscriber penetration of 15 to 20 million, the level necessary to cover its costs, begin making a profit and become commercially viable.

4. BET on Jazz presently has 250,000 subscribers. Growth to date has been hindered by a number of factors, including among others the lack of available channel capacity on cable systems, the failure of channel capacity to expand as rapidly as predicted through digital compression and other technological advances, and even the "chill" that has been cast by the pendency of the Commission's current leased access proposals on cable operators' willingness to launch, or negotiate future carriage agreements with, new networks such as BET on Jazz.

5. A formula that reduces rates for leased access users substantially below market value, such as the cost/market formula proposed by the Commission, will artificially boost usage of leased access set-aside channels, many of which are currently used to carry new networks such as BET on Jazz. In doing so, the formula necessarily will result in a dramatic reduction in channel capacity available to start-up programmers. This reduction, both in existing channel availability and in the extent to which BET on Jazz can expect to be carried on newly added channels as systems' channel capacities expand, will significantly impede the

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[1]*Sixth Order on Reconsideration*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, 10 FCC Rcd. 1226 (1994) at Appendix C, 1316-1319.

ability of BET on Jazz to increase distribution, particularly in the crucial early years of the network's development. Consequently, the time that it will take BET on Jazz to increase distribution to 20 million subscribers, the network's break-even point, will be substantially lengthened. Indeed, if the Commission were to adopt its proposed formula and apply only a three year transition, as it suggested by way of example in its NPRM[2], it is almost a certainty that our network could not survive long enough to obtain sufficient distribution to reach break-even, given the network's substantial start-up and programming costs and early year losses. It is these dire consequences that have led BET on Jazz to oppose so strenuously the Commission's proposed revisions to the existing maximum implicit fee leased access formula and, in the event that the formula must be revised, to support the formulation proposed by the National Cable Television Association.

6. These same factors have also prompted BET on Jazz to propose that, should the Commission adopt any formula that results in a leased access rate that is lower than the current maximum implicit fee, the Commission accompany such change with a sufficient transition period to allow the industry, and in particular new program networks such as BET on Jazz, to adjust to the change in a way that will minimize the harm that the resulting reduction in distribution would otherwise be certain to cause. In particular, BET on Jazz has proposed a detailed transition plan tailored to the Commission's proposal to adopt its cost/market formula. While this transition plan will still result in much slower subscriber

[2]*Further Notice of Proposed Rulemaking*, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation -- Leased Commercial Access, MM Docket No. 92-266, CS Docket No. 96-60, FCC 96-122 (released March 29, 1996) at ¶ 99.

growth than BET on Jazz assumed in its original business plan -- with penetration of 20 million not being attained until at least its seventh or eighth year of operation, if not later -- it would at least give BET on Jazz a chance of reaching break-even and ultimate commercial viability. Absent a transition provision of the type proposed here, the Commission's adoption of its proposed leased access formula would be certain to cause the failure of our network. In the following paragraphs, I will explain the reasons for the principal features of our suggested transition plan.

7. First, should the FCC adopt its proposed cost/market formula, it will take at least six years for BET on Jazz to increase distribution on cable systems and other multi-channel video program distributors, and to develop a level of subscriber recognition and loyalty -- assuming that our proposed transition plan is also adopted -- sufficient to withstand the impact on distribution that full application of the Commission's reduced-rate formula to all set-aside channels inevitably will cause. Moreover, it will be at least six years until cable systems' channel capacity will have grown enough both to accommodate the full complement of leased access set-aside channels *and* to enable cable operators to carry start-up networks such as BET on Jazz in sufficient numbers to support the networks' continued operations. For these reasons, we are proposing that the overall transition period be no less than six years.

8. Second, a reduced-rate formula should not apply to any cable system with 72 or fewer activated channels until the expiration of the six year transition period, or until system upgrades cause channel capacity to exceed 72 channels, whichever occurs first. Cable systems with 72 or fewer activated channels generally are channel-locked, having virtually no

available channel capacity on which to add new programming networks such as BET on Jazz; indeed such systems generally are still at the phase of adding more established programming networks such as A&E or Discovery. If the Commission's proposed formula were to be applied to such systems, any remaining chance of BET on Jazz being carried by any of these systems would be lost, and BET on Jazz would likely be bumped by those few systems in this size group that do carry the network. Cable systems with 72 or fewer channels cannot be subjected to the new rate formula if BET on Jazz, and other start-up networks, are to succeed in increasing distribution to the level necessary to become commercially viable.

9. Third, the initial years of the six year transition period are the most critical to the success of BET on Jazz and other start-up networks. BET on Jazz is currently scheduled to launch on a number of systems, and is in the midst of negotiations with others. To date, the mere pendency of the Commission's leased access proposals has chilled cable systems' willingness to enter into, or even discuss, carriage agreements with the network. In order that the Commission's adoption of a reduced leased access rate formula not sabotage the network's completion of both its scheduled launches and its current negotiations, BET on Jazz needs at least one year in which the new rate formula would not be applied to cable systems, so that such burgeoning relationships not be undermined.[3]

10. Fourth, it is also critical to the success of BET on Jazz that the rate formula be phased in gradually over years two through six, such that application of a reduced leased

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[3] We do not seek this one-year hiatus with cable systems that have 130 or more channels, since such systems already possess sufficient capacity to accommodate increased leased access obligations without foregoing their ability to carry start-up networks like BET on Jazz.

access rate formula would apply less in early years, and then to an increasing percentage of cable systems' set-aside requirements in each successive year. In particular:

a. A reduced-rate formula should be phased in for systems with between 73 and 89 activated channels, beginning with application of the revised rate to 10 percent of channel set-asides by the end of year two, increasing to 25 percent by the end of year three, 45 percent by the end of year four, 70 percent by the end of year five, and 100 percent by the end of year six. Start-up programming networks have their greatest chance of being carried, if at all, by cable systems with more than 72 activated channels. Application of the Commission's proposed formula to cable systems of this size without a graduated transition would result in BET on Jazz, and other start-up programming networks, being bumped from, or not being added by, such systems during the next several years, the most crucial for BET on Jazz and other new networks.

b. The Commission's proposed formula should also be phased in for systems with between 90 and 129 channels, albeit at a slightly accelerated rate, beginning with application of the revised formula to 15 percent of channel set-asides by the end of year two, increasing to 35 percent by the end of year three, to 60 percent by the end of year four, to 90 percent by the end of year five, and to 100 percent by the end of year six. Systems of this size are also crucial to the ability of BET on Jazz to obtain distribution. However, because of their greater channel capacity, it would be possible for such systems to introduce the Commission's proposed cost/market formula at a slightly accelerated rate without inordinately interfering with the launch of new networks such as BET on Jazz. This factor has been reflected in the increased rate of transition.

11. Finally, BET on Jazz believes that it is not necessary to have any delay in implementation of the Commission's proposed formula to cable systems with 130 or more channels. Such systems would appear to have adequate capacity to immediately introduce a revised leased access formula without significantly impacting their carriage of start-up networks.

12. The transition provision described herein should not be deemed to indicate approval of BET on Jazz, in any manner, of the Commission's proposed leased access formula. BET on Jazz opposes that formula, and alternatively believes that, if the current maximum implicit fee formula is to be revised, the formula proposed by NCTA should be adopted instead. It is only in the event that the FCC rejects our position, and goes forward with its proposed cost/market formula, that we propose the adoption of the foregoing transition plan.

13. Finally, in the event that the Commission does not adopt its cost/market formula, but adopts some other formula (including the NCTA formula) that nonetheless has the effect of reducing fees for leased access from current maximum implicit fee rates, BET on Jazz submits that the Commission must include an appropriate transition provision consistent with the transition plan described above. Any such transition plan should take into consideration the extent to which the current maximum implicit fee formula is reduced, and should tie implementation of the new formula to growth in cable systems' channel capacity. As above, such transition plan should include a first year hiatus during which the revised leased access rate formula would not be applied to leased access channels on any system

having fewer than 130 channels, and should introduce the application of the new formula in years two through six on a graduated basis.

I, Jefferi K. Lee, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Jefferi K. Lee

May 31, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Commercial Leased Access	MM Docket No. 92-266 CS Docket No. 96-60

SECOND AFFIDAVIT OF CHRISTOPHER R. MURVIN

1. I, Christopher R. Murvin, am Senior Vice President, Legal and Business Affairs, and Secretary, of The Golf Channel. I have given a previous affidavit in this proceeding, which was submitted in support of, and as an attachment to, the Comments filed by Outdoor Life Network, Speedvision Network, The Golf Channel, and BET On Jazz (collectively, "Programmers").

2. The purpose of this affidavit is to provide additional information in support of the Reply Comments that Programmers are presently submitting in response to comments filed by other parties concerning the *Further Notice of Proposed Rulemaking* ("NPRM"). In particular, this affidavit is intended to explain the basis for, and rationale of, the transition period recommended by Programmers in their Comments and Reply Comments.

3. In developing its original business plan, The Golf Channel relied heavily upon reasonable assumptions regarding both then-extant channel availability on cable systems nationwide and on estimated increases in cable systems' channel capacity that were expected to

develop over the following ten years. The Golf Channel's estimates of growth in channel capacity were not unlike the Commission's own forecast, in its "going forward" *Order*,[1] that cable systems would increase channel capacity at a rate of nearly three channels per year. Based on those assumptions, The Golf Channel estimated that it would take at least three to five years from its launch date in January 1995 in which to attain subscriber penetration of 20 million, the level necessary to cover its costs, begin making a profit and become commercially viable.

4. The Golf Channel presently has 2.5 million subscribers. Growth to date has been hindered by a number of factors, including among others the lack of available channel capacity on cable systems, the failure of channel capacity to expand as rapidly as predicted through digital compression and other technological advances, and even the "chill" that has been cast by the pendency of the Commission's current leased access proposals on cable operators' willingness to launch, or negotiate future carriage agreements with, new networks such as The Golf Channel.

5. A formula that reduces rates for leased access users substantially below market value, such as the cost/market formula proposed by the Commission, will artificially boost usage of leased access set-aside channels, many of which are currently used to carry new networks such as The Golf Channel. In doing so, the formula necessarily will result in a dramatic reduction in channel capacity available to start-up programmers. This reduction, both in existing channel availability and in the extent to which The Golf Channel can expect to be carried on newly added channels as systems' channel capacities expand, will significantly impede The Golf Channels' ability to increase distribution, particularly in the crucial early years of the network's

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[1]*Sixth Order on Reconsideration*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, 10 FCC Rcd. 1226 (1994) at Appendix C, 1316-1319.

development. Consequently, the time that it will take The Golf Channel to increase distribution to 20 million subscribers, the network's break-even point, will be substantially lengthened. Indeed, if the Commission were to adopt its proposed formula and apply only a three year transition, as it suggested by way of example in its NPRM[2], it is almost a certainty that our network could not survive long enough to obtain sufficient distribution to reach break-even, given the network's substantial start-up and programming costs and early year losses. It is these dire consequences that have led The Golf Channel to oppose so strenuously the Commission's proposed revisions to the existing maximum implicit fee leased access formula and, in the event the formula must be revised, to support the formula proposed by the National Cable Television Association.

6. These same factors have also prompted The Golf Channel to propose that, should the Commission adopt any formula that results in a leased access rate that is lower than the current maximum implicit fee, the Commission accompany such change with a sufficient transition period to allow the industry, and in particular new program networks such as The Golf Channel, to adjust to the change in a way that will minimize the harm that the resulting reduction in distribution would otherwise be certain to cause. In particular, the Networks have proposed a detailed transition plan tailored to the Commission's proposal to adopt its cost/market formula. While this transition plan will still result in much slower subscriber growth than The Golf Channel assumed in its original business plan -- with penetration of 20 million not being attained

[2]*Further Notice of Proposed Rulemaking*, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation -- Leased Commercial Access, MM Docket No. 92-266, CS Docket No. 96-60, FCC 96-122 (released March 29, 1996) at ¶ 99.

until at least their sixth year of operation, if not later -- it would at least give The Golf Channel a chance of reaching break-even and ultimate commercial viability. Absent a transition provision of the type proposed here, the Commission's adoption of its proposed leased access formula would be certain to cause the failure of our network. In the following paragraphs, I will explain the reasons for the principal features of our suggested transition plan.

7. First, should the FCC adopt its proposed cost/market formula, it will take at least six years for The Golf Channel to increase distribution on cable systems and other multi-channel video program distributors, and to develop a level of subscriber recognition and loyalty, sufficient to withstand the impact on distribution that full application of the Commission's reduced-rate formula to all set-aside channels inevitably will cause. Moreover, it will be at least six years until cable systems' channel capacity will have grown enough both to accommodate the full complement of leased access set-aside channels *and* to enable cable operators to carry start-up networks such as The Golf Channel in sufficient numbers to support the networks' continued operations. For these reasons, we are proposing that the overall transition period be no less than six years.

8. Second, a reduced-rate formula should not apply to any cable system with 72 or fewer activated channels until the expiration of the six year transition period, or until system upgrades cause channel capacity to exceed 72 channels, whichever occurs first. Cable systems with 72 or fewer activated channels generally are channel-locked, having virtually no available channel capacity on which to add new programming networks such as The Golf Channel; indeed such systems generally are still at the phase of adding more established programming networks such as A&E or Discovery. If the Commission's proposed formula were to be applied to such

systems, any remaining chance of The Golf Channel being carried by any of these systems would be lost, and The Golf Channel would likely be bumped by those few systems in this size group that do carry the network. Cable systems with 72 or fewer channels cannot be subjected to the new rate formula if The Golf Channel, and other start-up networks, are to succeed in increasing distribution to the level necessary to become commercially viable.

9. Third, the initial years of the six year transition period are the most critical to the success of The Golf Channel and other start-up networks. The Golf Channel is currently scheduled to launch on a number of systems, and is in the midst of negotiations with others. To date, the mere pendency of the Commission's leased access proposals has chilled cable systems' willingness to enter into, or even discuss, carriage agreements with the network. In order that the Commission's adoption of a reduced leased access rate formula not sabotage the network's completion of both its scheduled launches and its current negotiations, The Golf Channel needs at least one year in which the new rate formula would not be applied to cable systems, so that such burgeoning relationships not be undermined.[3]

10. Fourth, it is also critical to The Golf Channel's success that the rate formula be phased in gradually over years two through six, such that application of a reduced leased access rate formula would apply less in early years, and then to an increasing percentage of cable systems' set-aside requirements in each successive year. In particular:

a. A reduced-rate formula should be phased in for systems with between 73 and 89 activated channels,

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[3] We do not seek this one-year hiatus with cable systems that have 130 or more channels, since such systems generally already possess sufficient capacity to accommodate increased leased access obligations without foregoing their ability to carry start-up networks like The Golf Channel.

beginning with application of the revised rate to 10 percent of channel set-asides by the end of year two, increasing to 25 percent by the end of year three, 45 percent by the end of year four, 70 percent by the end of year five, and 100 percent by the end of year six. Start-up programming networks have their greatest chance of being carried, if at all, by cable systems with more than 72 activated channels. Application of the Commission's proposed formula to cable systems of this size without a graduated transition would result in The Golf Channel, and other start-up programming networks, being bumped from, or not being added by, such systems during the next several years, the most crucial for The Golf Channel and other new networks.

b. The Commission's proposed formula should also be phased in for systems with between 90 and 129 channels, albeit at a slightly accelerated rate, beginning with application of the revised formula to 15 percent of channel set-asides by the end of year two, increasing to 35 percent by the end of year three, to 60 percent by the end of year four, to 90 percent by the end of year five, and to 100 percent by the end of year six. Systems of this size are also crucial to The Golf Channel's ability to obtain distribution. However, because of their greater channel capacity, it would be possible for such systems to introduce the Commission's proposed cost/market formula at a slightly accelerated rate without inordinately interfering with the launch of new networks such as The Golf Channel. This factor has been reflected in the increased rate of transition.

11. Finally, The Golf Channel believes that it is not necessary to have a year delay in implementation of the Commission's proposed formula to cable systems with more than 130 or more channels. However, even for systems of this size, the Commission's proposed formula should be phased in, as opposed to being applied in full, immediately, to all channel set-aside

requirements. A phase-in is appropriate for these systems given the substantial impact that giving away up to 15 percent of their channels (18 channels for a system with 130 activated channels, including 10 must-carry channels) to leased access users will have on their ability to add new programming networks. Accordingly, we have proposed that the Commission's cost/market formula would be applicable to 25 percent of the set-aside requirement of such systems by the end of year one, 50 percent by the end of year two, 75 percent by the end of year three, and to 100 percent of the leased access set-asides of 130-plus channel systems by the end of year four.

12. The Golf Channel's alternative proposal of the transition provision described herein should not be deemed to indicate approval, in any manner, of the Commission's proposed leased access formula. The Golf Channel opposes that formula, and alternatively believes that, if the current maximum implicit fee formula is to be revised, the formula proposed by NCTA should be adopted instead. It is only in the event that the Commission rejects our position and goes forward with its proposed cost/market formula, that we propose the adoption of the foregoing transition plan.

13. Finally, in the event that the Commission does not adopt its cost/market formula, but adopts some other formula that nonetheless has the effect of reducing fees for leased access from current maximum implicit fee rates, The Golf Channel submits that the Commission must include an appropriate transition provision consistent with the transition plan described above, including a first year hiatus during which the revised leased access rate formula would not be applied to leased access channels on any system having fewer than 130 channels.

I, Christopher R. Murvin, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Christopher R. Murvin

May 31, 1996